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June 13, 2019

Ms. Marlene Dortch  
Secretary  
Federal Communications Commission  
445 12th Street, NW  
Portals II, Room TW-A325  
Washington, DC 20554

**Ex Parte Submission**

Re: *Petitions for Declaratory Ruling Filed by BellSouth and Alabama 911 Districts Regarding the Meaning of the Commission's Definition of Interconnected VoIP in 47 C.F.R. § 9.3 and the Prohibition on State Imposition of 911 Charges on VoIP Customers in 47 U.S.C. § 615a-1(f)(1)*, WC Docket No. 19-44

Dear Ms. Dortch:

In a June 7, 2019 ex parte notice, AT&T and other participants in this docket noted that the Florida court had not yet ruled on a motion filed by AT&T, CenturyLink, Frontier, and Verizon to extend the primary jurisdiction stay that court had entered.<sup>1</sup>

On June 12, 2019, the court granted that motion, extending the stay through December 9, 2019.

A copy of that Order is attached as Exhibit A.

In the Order, the court explained that Phone Recovery Services ("PRS") alleges that Florida's 911 statute "requires VoIP customers to pay up to five times as many 911 charges as similarly situated customers buying traditional telephone service." Order at 2.

The court further noted that PRS's "allegation implicates the federal provision that preempts states from imposing certain discriminatory 911 charges on VoIP customers," citing 47 U.S.C. § 615a-1(f)(1). *Id.* Finally, the court recognized that the Commission "has expertise and receives deference in interpreting the scope of that federal statutory provision" and, therefore, the Commission's rulings "in its pending agency proceedings may have some effect on the outcome of the instant case." *Id.*

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<sup>1</sup> Windstream is also a defendant in the Florida actions, but did not join in the motion because the case in which it is a defendant is currently subject to the automatic bankruptcy stay, 11 U.S.C. § 362.

The court's ruling and reasoning supports the arguments at 2-5 of the June 7, 2019 ex parte notice, while the limited duration of the stay highlights the need for prompt action in resolving the petitions for declaratory ruling. *See* June 7, 2019 ex parte at 6-7.

Sincerely,

A handwritten signature in black ink, appearing to read 'Matt Nodine', with a stylized, sweeping flourish at the end.

Matt Nodine

*AT&T Services Inc.*

cc: Terri Natoli  
Michael Ray  
Pamela Arluk  
Michele Berlove  
Erika Olsen  
Elizabeth Cuttner

# EXHIBIT A

**IN THE CIRCUIT COURT OF THE SECOND JUDICIAL CIRCUIT  
IN AND FOR LEON COUNTY, FLORIDA**

State of Florida, *ex rel.* PHONE RECOVERY  
SERVICES, LLC, BRINGING THIS ACTION  
ON BEHALF OF THE STATE OF FLORIDA,

Plaintiff,

v.

VERIZON BUSINESS GLOBAL LLC, *et al.*,

Defendants.

Case No.: 2016 CA 000062

State of Florida, *ex rel.* PHONE RECOVERY  
SERVICES, LLC, BRINGING THIS ACTION  
ON BEHALF OF THE STATE OF FLORIDA,

Plaintiff,

v.

AT&T CORP., *et al.*,

Defendants.

Case No.: 2016 CA 002099

State of Florida, *ex rel.* PHONE RECOVERY  
SERVICES, LLC, BRINGING THIS ACTION  
ON BEHALF OF THE STATE OF FLORIDA,

Plaintiff,

v.

CENTURYLINK COMMUNICATIONS LLC,  
*et al.*,

Defendants.

Case No.: 2016 CA 002101

State of Florida, *ex rel.* PHONE RECOVERY  
SERVICES, LLC, BRINGING THIS ACTION  
ON BEHALF OF THE STATE OF FLORIDA,

Plaintiff,

v.

LEVEL 3, LLC, *et al.*,

Defendants.

Case No.: 2016 CA 002102

**ORDER GRANTING DEFENDANTS' MOTION TO EXTEND THE STAY**

**THIS CAUSE** comes before the Court on Defendants' "Motion to Extend the Stay Pursuant to the Primary Jurisdiction Doctrine," filed in the four above-captioned related cases on April 24, 2019.<sup>1</sup> Defendants request this Court to stay these cases under the primary jurisdiction doctrine until the Federal Communications Commission ("FCC") enters a ruling on the petitions for declaratory ruling filed in WC Docket No. 19-44, or until such time as a motion to terminate the stay or to pursue limited discovery is granted. Upon reviewing the motion, the memorandum in support, Relator's opposition thereto, Defendants' reply memorandum, the file, hearing the arguments of the parties, and being otherwise fully informed in the premises, the Court finds as follows:

The decision to stay a case—either indefinitely or on a limited basis—is within the Court's discretion. Inphynet Contracting Services, Inc. v. Matthews, 196 So. 3d 449, 463 (Fla. 4th DCA 2016). "Judges and lawyers have a professional obligation to conclude litigation as soon as it is

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<sup>1</sup> A fifth related case, State of Florida, ex rel. Phone Recovery Services, LLC v. Windstream Communications LLC, No. 2016 CA 002103, is currently stayed pursuant to the automatic bankruptcy stay, see 11 U.S.C. § 362.

reasonably and justly possible to do so.” Rule 2.545(a), Fla. R. Jud. Admin; see also Rule 2.250(a)(1)(B), Fla. R. Jud. Admin.

In each of the above-captioned cases, Relator Phone Recovery Services, LLC (“PRS”) alleges that “most business accounts — even accounts that providers label as ‘PRI’ — fall within the FCC’s definition of VoIP,” and that “Defendants’ misapplication” of the “FCC’s definition” has “a significant impact on the E911 Fees billed, collected and remitted to Florida.” E.g., First Am. AT&T Compl. ¶¶ 50-51, Leon County Case No. 2016 CA 002099. The Florida Legislature expressly incorporated the federal definition of VoIP into the E911 Act and recognized the federal agency’s expertise in interpreting its own regulatory definition by also incorporating into the E911 Act any subsequently adopted FCC orders regarding VoIP and 911 service. See Fla. Stat. § 365.172(3)(t)(2), (cc). In addition, each PRS complaint alleges that the E911 Act requires VoIP customers to pay up to five times as many 911 charges as similarly situated customers buying traditional telephone service. See, e.g., First Am. AT&T Compl. ¶ 50, Leon County Case No. 2016 CA 002099. This allegation implicates the federal provision that preempts states from imposing certain discriminatory 911 charges on VoIP customers. See 47 U.S.C. § 615a-1(f)(1). The FCC also has expertise and receives deference in interpreting the scope of that federal statutory provision that it administers. See Global Crossing Telecomms., Inc. v. Metrophones Telecomms., Inc., 550 U.S. 45, 55 (2007) (citing Chevron, U.S.A., Inc. v. Natural Res. Def. Council, Inc., 467 U.S. 837, 843-44 (1984)).<sup>2</sup> Thus, it appears to the Court that the FCC’s rulings on these issues in its pending agency proceedings may have some effect on the outcome of the instant case.

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<sup>2</sup> The recent amendment to Florida’s Constitution does not purport to preclude state courts from following U.S. Supreme Court decisions by giving such deference to a federal agency’s interpretation of a federal statute it administers. Rather, it pertains to the deference owed to a Florida agency’s interpretations of “state statute[s] or rule[s].” See Fla. Const. Art. V, § 21.

The Court additionally finds that PRS will not be prejudiced by an extension of the stay. Defendants have presented to this Court that the central legal issues in these cases are now fully briefed before the FCC, all interested parties have been given the opportunity to participate, they have urged the FCC to act expeditiously and records are being retained in the interim. While the Court has an obligation to conclude litigation as soon as reasonably and justly possible, it must also balance its interest in promoting judicial economy and minimizing potential wasteful expenditure of resources. Accordingly, it is

**ORDERED AND ADJUDGED** that

1. Defendants' motion to extend the stay is hereby **GRANTED**.
2. These cases are **STAYED** for an additional one hundred eighty (180) days.
3. At any point after one hundred eighty (180) days from the date of this order, the Court will entertain motions to address the scope of permitted discovery.
4. Defendants are **ORDERED** to notify the Court of the FCC's decision within thirty (30) days of its release.

**DONE AND ORDERED** in Chambers, Tallahassee, Leon County, Florida on this 12<sup>th</sup> day of June, 2019.

  
**RONALD W. FLURY**  
Circuit Judge

*Copies to:* counsel of record (via e-filing portal)